

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 544 of 2018 (O&M)

Date of Decision: 01.09.2022

Reserved On: 26.08.2022

Shakuntla Devi and Others

... Petitioner(s)

Versus

Surjeet Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kshitij Sharma, Mr. Kishore Bhardwaj and
Mr. Vidul Kapoor, Advocates, for the appellant(s).

Mr. G.S.Bhatia, Mr. J.S.Bhatia and
Mr. Manoj K. Sharma, Advocates
for the respondent No.1.

Mr. Kushagra Beniwal, Advocate
for Mr. Gurinderjit Singh, Advocate
for the respondent No.2 to 4.

Anil Kshetarpal, J.

1. The regular second appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure (hereinafter referred to as “CPC”), as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. While assailing the judgment passed by the First Appellate Court, the defendants have filed the present appeal. The trial Court dismissed the plaintiff's suit (respondent herein), whereas, the First

Appellate Court, while reversing the judgment and decree passed by the trial

Court, has decreed the suit.

3. The following issues arise for consideration:-

- i) If both the attesting witnesses are dead, whether the Will stands proved, if the propounder of the Will duly proves the signatures of one of the attesting witnesses?
- ii) If there is no other evidence led by the parties to prove the signatures of the testator on the registered Will, whether the Court, in accordance with Section 73 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) is empowered to compare the signatures of the testator, particularly when a large number of standard/specimen signatures are available on the various documents, authenticity whereof cannot be doubted?
- iii) Whether it is necessary to examine the marginal witnesses of a duly registered power of attorney?

4. The detailed facts have been noticed by the trial Court as well as the First Appellate Court, however, to complete the narration of facts, some necessary skeleton facts, are being noticed.

5. The dispute is with regard to 50% share in SCO No. 460, Motor Market Manimajra, Union Territory, Chandigarh. The site was allotted on 10.06.1980 in favour of Sh.Surjeet Singh and Sh.Raghubir Singh (in equal share) by the Notified Area Committee, Manimajra. The plaintiff (the respondent herein) is Sh.Surjeet Singh. Whereas, the private defendants (the appellants herein) are heirs of late Sh.Raghubir Singh, who died on 24.01.1990. Sh.Surjeet Singh, besides himself being the owner to the extent

of 50% in above noted showrooms, claims to be the owners of the share of late Sh.Raghubir Singh on the basis of various documents executed by late Sh.Raghubir Singh on 30.08.1980 including an affidavit, special power of attorney, general power of attorney, agreement of transfer of rights and future sale and a registered Will. On the other hand, the defendants claim the property on the basis of natural succession. In other words, the dispute is with regard to estate of late Sh.Raghubir Singh in S.C.O. No. 460.

6. On 06.09.2012, Sh.Surjeet Singh, filed a suit for grant of decree of declaration to the effect that he is exclusive owner in possession of the aforesaid Shop-cum-Office and the mutation (entry in the official record) in favour of the defendant No.1 to 6 is wrong while issuing directions to the Municipal Corporation to enter the complete property in his name. He also prayed for grant of injunction restraining the defendant No.1 to 6 from alienating 50% share of the property in question. The defendant No.1 to 6, while contesting the suit, denied execution of the Will and various other documents by late Sh.Raghubir Singh. The defendant No.7 to 9 also contested the suit on various technical objections. Replications to the different written statements were filed by the plaintiff and the following issues were culled out:-

- “1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP*
- 3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 4. Whether present suit is not maintainable? OPD*

5. *Whether present suit is hopelessly barred by limitation?*

OPD

6. *Whether plaintiff has no locus standi to file the present suit? OPD*

7. *Relief”.*

7. In order to prove his case, the plaintiff examined PW.1 Sh.Love Kishore Aggarwal son of late Sh.Ghanshyam Dass, PW.2 Sh.Avtar Singh son as well as General Attorney of Sh.Surjeet Singh and PW.3 Sh.Bhag Chand, Clerk from the office of the Sub Registrar, Union Territory, Chandigarh. On the other hand, the defendants examined DW.1 Sh.Santokh Singh, DW.2 Sh.Jagir Singh, DW.3 Sh.Avtar Singh son of late Sh.Raghubir Singh and DW.4 Smt.Champa Bhatta.

8. The trial Court dismissed the suit after recording a finding that though the plaintiff has proved the Will, however, it is surrounded by various suspicious circumstances. The First Appellate Court, while reversing the judgment and decree, affirmed the findings of the trial Court that the Will is proved, however, held that there are no suspicious circumstances, particularly when the plaintiff Sh.Surjeet Singh has produced the overwhelming evidence to prove that late Sh.Raghubir Singh had intended to transfer the property in his favour.

9. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book and the record, which was requisitioned.

10. Sh. Kshitij Sharma, Advocate, learned counsel representing the appellant, while referring to the evidence, submits that the First Appellate Court did not adopt a rational approach and failed to satisfy its conscience.

He submits that while examining the genuineness and correctness of the Will, the Court was required to act as a Court of conscientious and convincing explanation regarding the suspicious circumstances should have been sought from the propounder. The First Appellate Court has failed to probe and investigate properly. Even if no plea of fraud, coercion or undue influence was raised, still the circumstances giving rise to genuine doubts were required to be examined by the Appellate Court before accepting the correctness of Will. The First Appellate Court has failed to comprehend that the suit was filed after a delay of 22 years from the execution of the Will and 12 years after the death of Sh.Raghubir Singh, and such delay has remained totally unexplained.

11. Per contra, the learned counsel representing the plaintiff (respondent herein) contends that in view of the overwhelming evidence including the registered Will, conveyance deed, affidavit, agreement to transfer the property, special power of attorney, general power of attorney and the partnership deed, it is proved that late Sh.Raghubir Singh had intended that the property, during his life time as well as after his death, would continue to vest in Sh.Surjeet Singh.

12. At this stage, it is important to note that the plaintiff, in order to prove his case, has produced the original registered will allegedly executed by late Sh.Raghubir Singh on 30.10.1980 as Ex.P2. On a careful reading thereof, it is evident that late Sh.Raghubir Singh has bequeathed his half share of property bearing commercial site No. 460 measuring 293.3 square yards located in Motor Market at Manimajra, U.T. Chandigarh, in favour of his partner Sh.Surjeet Singh son of Sh.Harchand Singh. This testamentary

disposition is only with respect to 50% share in the shop-cum-office and not with respect to any other property left behind by late Sh.Raghubir Singh. The alleged Will is signed by late Sh.Raghubir Singh as well as two attesting witnesses, namely late Sh.Ghanshyam Dass and late Sh.Mansa Ram, Advocate, who was also the Scribe of the Will. The aforesaid Will is typed in English language, whereas late Sh.Raghubir Singh has signed the Will, at the end of the page, in Devnagri scripts. Late Sh.Raghubir Singh has also signed the Will at the time of its presentation for registration as also at the time when the Sub-Registrar registered the Will. It has been proved on file that late Sh.Mansa Ram, late Sh.Ghanshyam Dass as well as late Sh.Raghubir Singh have died. In order to prove their case, the plaintiff has also produced the deed of conveyance of building site dated 20.01.1982 executed by the Notified Area Committee, Manimajra, in favour of Sh.Surjeet Singh and late Sh.Raghubir Singh as Ex.P6. The plaintiff has also produced the various documents executed on 30.10.1980 including an affidavit, special power of attorney jointly executed by Sh.Surjeet Singh and late Sh.Raghubir Singh in favour of Sh.Harchand Singh (Sh.Surjeet Singh's father), general power of attorney executed by late Sh.Raghubir Singh in favour of Sh.Surjeet Singh and agreement of transfer of rights and future sale and partnership deed dated 19.04.1977 between Sh.Surjeet Singh and late Sh.Raghubir Singh. Unfortunately, neither the special power of attorney nor the general power of attorney were exhibited on record, though, their originals were produced. In accordance with Order XIII Rule 4 CPC, added by the States of Punjab and Haryana vide amendment dated 11.06.1974, this Court exhibits the aforesaid documents as Ex.P7 and Ex.P8, respectively.

The amendment in Order XIII Rule 4 CPC as applicable to the States of Punjab, Haryana and Union Territory, Chandigarh, is extracted as under:-

“Order XIII Rule 4

Endorsement on documents admitted in evidence:-

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:

- (a) The number and title of the suit,*
- (b) The name of the person producing the document,*
- (c) The date on which it was produced, and*
- (d) A statement of its having been so admitted, and the endorsement shall be signed or initialed by the Judge.*

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge.

Provided that where the Court is satisfied that the document, not endorsed in the manner laid down in the above rule, was in fact, admitted in evidence, it shall treat the document as having been properly admitted in evidence, unless non-compliance with this rule has resulted in miscarriage of justice.”

13. On behalf of the defendants, Sh.Avtar Singh son of Sh.Raghubir

Singh has appeared in evidence. His deposition makes an interesting

reading. The relevant part whereof is extracted as under:-

“My father do not own any firm. My father was not partner with Sh.Surjit Singh at any point of time. My father was doing the business of manufacturing of truck bodies.

XXXX XXXX XXXX XXXX XXXX

Raghubir and Surjit were not known to each other. I do not remember under what capacity the SCF no. 460 Motor Market was allotted to Sh.Surjit Singh and my father.

XXXX XXXX XXXX XXXX XXXX

I came to know regarding the allotment of SCF about 3-4 years ago.

XXXX XXXX XXXX XXXX XXXX

I can identify the signatures of my father. My father used to sign in Hindi language. My father had not signed the original G.P.A.

as put to the witness during his cross examination which is dated 30/10/1980. Similarly my father had not signed S.P.S.dt.

30/10/1980 and similar is my reply with regard to Aggreement of transfer of rights and future sale alongwith partnership deed

which is not signed by my father. My father had not executed the Will Ex.P2. The document that is Deed of Conveyance

which I have seen today in original also do not bear the signatures of my father Raghbir Singh. It is wrong to suggest

that original Conveyance Deed is bear the signatures of my father. I have not brought any document containing the

signatures of my father late Sh.Raghbir Singh.

XXXX XXXX XXXX XXXX XXXX

Ex.P6 also does not bear the signatures of my father. I cannot produce the signatures of my father.

XXXX XXXX XXXX XXXX XXXX

It is correct that before the year 2011 we have not moved an application for the transfer of the share of my father.

XXXX XXXX XXXX XXXX XXXX

It is correct that the entire SCF is in the possession of plaintiff.

We have not issued any notice to the plaintiff before transferring the share of our father.

14. **Determination of Issues**

Issue No. (i)

If both the attesting witnesses are dead, whether the Will stands proved, if the propounder of the Will duly proves the signatures of one of the attesting witnesses?

14.1 Both the Courts below have committed an error in recording finding that on the deposition of PW.1 Sh.Love Kishore Aggarwal, son of late Sh.Ghanshyam Dass, the Will stands proved. The trial Court has further erred in observing that the signatures of late Sh.Raghubir Singh on the Will has been proved by PW.3 Sh.Bhag Chand, Clerk from the office of the Sub-Registrar.

14.2 Since both the attesting witnesses of the Will are proved to have died before filing of the suit, therefore, Section 69 of the 1872 Act shall be applicable, which reads as under:-

“69. Proof where no attesting witness found. — If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his

handwriting, and that the signature of the person executing the document is in the hand writing of that person.

14.3 In such a situation, the propounder of the Will is expected to prove two things. The first requirement is that the attestation is in the handwriting of the attesting witness, whereas, the second requirement is that the document was signed by the executant. Fulfillment of one requirement is not sufficient proof of the Will. In such circumstances, particularly when PW.3 Sh.Bhag Singh was not in service when the Will was registered and he admits that he has not seen late Sh.Raghubir Singh signing the Will, therefore, both the Courts have committed an error. Hence, the issue No.(i) is answered in negative and against the appellant.

Issue No. (ii)

If there is no other evidence led by the parties to prove the signatures of the testator on the registered Will, whether the Court, in accordance with Section 73 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) is empowered to compare the signatures of the testator, particularly when a large number of standard/specimen signatures are available on the various documents, authenticity whereof cannot be doubted?

14.4 On a careful reading of Section 69 of the 1872 Act, as noticed above, it is evident that two requirements must be fulfilled, but both must co-exist. The first requirement with respect to proving the signatures of the attesting witness in his handwriting has been fulfilled by the plaintiff with the examination of PW.1 Sh.Love Kishore Aggarwal son of late Sh.Ghanshyam Dass. Despite his lengthy cross-examination, the learned counsel representing the defendant failed to impeach his credibility. Thus, the finding of facts arrived at by both the Courts below are upheld.

14.5 With regard to the second requirement, it is noted that late

Sh.Raghubir Singh had allegedly appended three signatures on the registered

Will. There are more than ten documents placed on the file, on which late Sh.Raghubir Singh had allegedly appended his signatures. Ex.P6 is a conveyance deed dated 29.01.1982 executed by the Chandigarh Administration in favour of late Sh.Raghubir Singh and Sh.Surjeet Singh while transferring the property. This transfer deed was executed after the entire price of the property was deposited in instalments. On the aforesaid document, late Sh.Raghubir Singh had appended his signatures at five different places spread over four pages. Apart from that, as noticed hereinbefore, the defendant has produced an affidavit and special power of attorney jointly executed by Sh.Surjeet Singh and late Sh.Raghubir Singh in favour of Sh.Harchand Singh (Sh.Surjeet Singh's father) on which late Sh.Raghubir Singh had appended his signatures, respectively. Seven signatures of late Sh.Raghubir Singh are existing on the registered general power of attorney, executed by him in favour of Sh.Surjeet Singh. Late Sh.Raghubir Singh had appended as many as five signatures on the agreement to sell and three signatures on the partnership deed.

14.6 Since no Handwriting and Fingerprint Expert has been examined, therefore, this Court is left with no choice, but to compare the various signatures of late Sh.Raghubir Singh, itself. Section 73 of the 1872 Act enables the Court to compare the signatures, writing or seal, if it is proved to the satisfaction of the Court that sufficient documents bearing the signatures of the person are available and sufficient evidence has been produced to enable the Court to compare the signatures. No doubt, in *State of Maharashtra and Others v. Sukhdeo Singh and Another (1992) 3 SCC*

700, the Supreme Court held that the Court should be slow to venture into

the arena of giving an opinion on the basis of mere comparison, more so when the quality of evidence in respect of specimen signature is not of high standard. However, the aforesaid case pertains to a criminal matter, wherein, General A.S.Vaidya, the then Chief of Army Staff was murdered. In the aforesaid case, the alleged handwriting of the accused was taken in the police custody. This matter was, once again, examined, at length, by the Supreme Court in *Ajit Savant Majagavi v. State of Karnataka (1997) 7 SCC 110*, wherein it was held that as a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing disputed signatures with that of admitted signatures. However, the Court ultimately held that this does not mean that the Court has no power to compare.

14.7 It is important to note that late Sh.Raghubir Singh remained alive for nearly ten years after executing all these documents noticed above. He never denounced these documents and there is no evidence to prove that he ever asserted any right in the suit property. No doubt, in the year 1982, the conveyance deed was executed in favour of Sh.Surjeet Singh and late Sh.Raghubir Singh, but except the aforesaid fact, there is no other evidence. It is the admitted case of defendant No. 1 to 6 that the sale deed could not be registered in 1980 with respect to the property in dispute because the transfer of the property was not permissible as per the terms of the allotment without payment of all the instalments and till the month of October, 1980, all the instalments were not yet paid.

14.8 In *Murari Lal v. State of Madhya Pradesh (1980) 1 SCC 704*, the Supreme Court, after discussing the provisions of Section 73 of the 1872

Act by holding that the Court is not an expert. Para 12 of the judgment is extracted as under:-

*“12. The argument that the Court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that **Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of Madhya Pradesh** were cases where the Court itself compared the writings.”*

14.9

Thus, empowered by Section 73 of the 1872 Act, this Court

proceeds to compare the signatures available on the various documents. On

comparison, it is evident that the signatures on the registered Will are with free flow of pen and signed in a normal course. The signatures are neither shaky nor there are any tremors. Late Sh.Raghubir Singh had appended his signatures in the usual manner as have been appended on the various other documents. The learned counsel representing the appellant (defendant No.1 to 6), despite an opportunity, has failed to draw any significant variation except the normal variation which is bound to happen if the signatures are with free flow of pen. The three disputed signatures can safely be compared with the signatures on various other documents including the special power of attorney as well as general power of attorney. Even the partnership deed, which was executed three years before the execution of the Will also shows that late Sh.Raghubir Singh had appended his genuine signatures.

14.10 The signatures of late Sh.Raghubir Singh are clear and the evidence is of higher standard. This Court, with the help of a magnifying glass, has compared the various signatures. The signatures on the Will appear to be genuine. The signatures on various documents neither appear to be result of tracing for another extra stress of the pen is visible

14.11 Moreover, there are various other circumstances which prove the fact of execution of Will. Sh.Avtar Singh, son of late Sh.Raghubir Singh, while appearing in evidence, has not categorically denied the signatures. The deposition of Sh.Avtar Singh son of late Sh.Raghubir Singh is not worth relying upon, particularly when he denied the signatures of his father late Sh.Raghubir Singh on the conveyance deed which was executed by the Union Territory, Chandigarh, jointly in favour of Sh.Surjeet Singh and late Sh.Raghubir Singh. Sh.Avtar Singh further denied that late Sh.Raghubir

overwhelming evidence to show that they both were partners. The Will is only in respect of 50% share in the shop-cum-office.

14.12 In view of the following circumstances, the signatures on the registered Will are held to be genuine.

- a) Various documents have been produced by the plaintiff wherein late Sh.Raghubir Singh had allegedly appended his signatures.
- b) After the death of late Sh.Raghubir Singh, his natural heirs did not claim the property or contacted the Municipal Corporation to make an entry in their favour for a period of 22 years. Sh.Avtar Singh son of late Sh.Raghubir Singh admitted that in the year 2011, for the first time, they contacted the Municipal Corporation for making an entry in this regard.
- c) The property has always remained in possession of the plaintiff (Sh.Surjeet Singh) and the heirs of late Sh.Raghubir Singh never claimed any share, during these 22 years particularly till the suit was filed by Sh.Surjeet Singh.
- d) Sh.Avtar Singh has no knowledge as to the time during which the instalments of the price of the property were paid and that the relevant documents of the property are in whose custody?
- e) Sh.Avtar Singh has refused to produce documents bearing signatures of his father.

different reasons than those recorded by the Courts below, it is held that the registered Will (Ex.P2) has been successfully proved by the plaintiff as the second requirement of proving the signatures of the testator in accordance with Section 69 of the 1872 Act, also, stands complied with.

Issue No. (iii)

Whether it is necessary to examine the marginal witnesses of a duly registered power of attorney?

14.14 With regard to issue No.(iii), this Court, in its recent judgment in *Smt.Parkash Devi vs. Rajinder Kumar (Regular Second Appeal No. 2819 of 2007, decided on 05.07.2022)*, has examined the issue in detail and held that in view of Section 33(4) of the Registration Act, 1908 (hereinafter referred to as “the 1908 Act”), a duly registered power of attorney is presumed to be proved by mere production in the Court without any further proof. To avoid repetition, the relevant discussion is extracted as under:-

“33. Power-of-attorney recognisable for purposes of section 32.-

(1) to (3) XXXX XXXX XXXX XXXX

(4) *Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf”.*

14.15 Thus, issue No.(iii) stands sufficiently answered.

15. There is some substance in the argument of the learned counsel representing the heirs of late Sh.Raghubir Singh (appellants) that the First Appellate Court has failed to discuss, analyze and explain the various

suspicious circumstances noticed by the trial Court while discarding the Will. However, with his able assistance, this Court has examined the same. The first suspicious circumstance, noticed by the trial Court, is that Sh.Surjeet Singh son of late Sh.Harchand Singh has not entered the witness box to prove the Will in his favour. It would be noted here that Sh.Surjeet Singh is proved to be settled abroad and his son Sh.Avtar Singh as his general power of attorney has appeared in the witness box. On the reading of his cross-examination, it is evident that he has answered all the questions. The trial Court relies upon *Janki Vashdeo Bhojwani and Others v. Indusind Bank Limited and Others 2005 (2) Civil Court Cases 325 (Supreme Court)* to draw an adverse inference against the plaintiff. However, it may be noted that an adverse inference cannot be drawn if sufficient evidence has been produced. The decision of this case is, primarily, based on documentary evidence which has been duly produced and proved. Hence, the trial Court has erred in observing that failure of Sh.Surjeet Singh to appear in evidence is fatal to the case. The second suspicious circumstance, as noticed by the Court, is that the plaintiff has not sought probate of the Will from any Court of law. There is no requirement that the beneficiary of the Will must file an application for grant of probate in the first instance. In this part of the country, the requirement of getting probate of the Will is not mandatory.

16. The Court has also held that late Sh.Raghubir Singh was not the full owner of the property, therefore, he cannot convey a better title than he himself had. It would be noted here that late Sh.Raghubir Singh transferred his allotment rights to his partner Sh.Surjeet Singh. On a careful reading of

the agreement, it is evident that he not only transferred his existing rights, but also his future rights in the property. In any case, in view of the principle laid down in Section 43 of the Transfer of Property Act, 1882 (hereinafter referred to as “the 1882 Act”), transfer by an unauthorized person, who subsequently acquires a valid interest in the property, is a good transfer.

Section 43 of the 1882 Act is extracted as under:-

“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option”.

17. The Court has also held that the plaintiff remained silent for a long period of 22 years before taking steps to get the property entered in his name on the basis of the said Will (Ex.P2). It would be noted here that admittedly, the plaintiff continued to enjoy exclusive possession without any interference from the heirs of late Sh.Raghubir Singh all these 22 years. Late Sh.Raghubir Singh had executed a registered Will. Hence, the delay of 22 years is immaterial as well as justified particularly when the heirs of late Sh.Raghubir Singh never took any step in this regard.

only strange, but also the result of overlooking the facts. The Court has held that there is no reason explained by the plaintiff to disinherit defendant No.1 to 6. It would be noted here that the trial Court has overlooked the overwhelming material available on the file. It is evident from a careful reading of the agreement to sell dated 30.10.1980 that late Sh.Raghubir Singh not only transferred the rights in the half share of the shop-cum-office in favour of Sh.Surjeet Singh in lieu of the entire sale consideration, but also acknowledged that he executed the special power of attorney, general power of attorney and the Will which are irrevocable documents. In such circumstances, the trial Court has erred in making such an observation.

19. The next reason assigned is, again, a result of failure of the trial Court to comprehend the entire facts. The Court has erred while holding that there is no document proved on record by the plaintiff to show how Sh.Surjeet Singh helped late Sh.Raghubir Singh. In fact, it was a case of outright sale of the allotment rights by late Sh.Raghubir Singh in favour of Sh.Surjeet Singh, which is evident from the agreement dated 30.10.1980. In fact, on cumulative reading of the various documents referred to above, it is evidently clear that late Sh.Raghubir Singh transferred his rights in the property in favour of Sh.Surjeet Singh.

20. The next reason assigned by the trial Court is again erroneous. The registered general power of attorney and special power of attorney are admissible on mere production in view of Section 33 of the 1908 Act read with various other provisions noticed above. Hence, these two documents along with the registered Will, which has been proved, are sufficient to hold that the Will is genuine. The Civil Court is required to decide the case on

the basis of preponderance of the evidence.

21. The last reason assigned by the trial Court is again erroneous as the Court has held that Sh.Surjeet Singh has only claimed decree of declaration that he is owner in possession of 50% share of site No.460, Motor Market, Manimajra, U.T. Chandigarh. It would be noted here that the trial Court has erred in properly reading the plaint. The plaintiff, in para 2, states that he and late Sh.Raghubir Singh were jointly allotted the property in question as they were close friends, who were, jointly, running a partnership firm. It has been stated that late Sh.Raghubir Singh bequeathed his 50% share in favour of Sh.Surjeet Singh vide registered Will dated 30.10.1980. In para 6 of the plaint, the plaintiff has unequivocally stated that now he is absolute owner of 100% share of the property. In that context, the trial Court has failed to read the prayer made in the suit, wherein Sh.Surjeet Singh states that he is already owner of 50% share, whereas, he should be declared the owner of the remaining 50% share.

22. Now, let us examine the arguments of the learned counsel representing the appellant.

23. The first argument of the learned counsel is not correct. The First Appellate Court, while accepting the appeal, has given detailed judgment while discussing the entire evidence produced on the file. The Court has taken into consideration the various circumstances, which prove that late Sh.Raghubir Singh did intend to bequeath the 50% share in the suit property in favour of his partner Sh.Surjeet Singh.

24. The second argument is also not correct particularly when the First Appellate Court has examined the Will in the context of the facts of the

deciding the case. The judgment relied upon by the learned counsel in *Bharpur Singh and Others v. Shamsher Singh (2009) 3 SCC 687* is distinguishable. In para 23 of the judgment, the Court enlisted the various suspicious circumstances, however, held that this is not a complete list. The explanation for suspicious circumstances depends upon the peculiar facts of the case and no suspicious circumstances are universally applicable to all the cases. In the facts and circumstances of the given case, the Court is required to adopt a rational and objective approach while deciding the same.

25. Undoubtedly, the First Appellate Court has failed to analyze the reasons recorded while observing that the Will is surrounded by suspicious circumstances. The conclusion drawn by the First Appellate Court is correct and the alleged suspicious circumstances noticed by the trial Court are not made out.

26. The next argument of the learned counsel is that the First Appellate Court could have probed or investigated further as to the correctness of the Will. It would be noted here that before the First Appellate Court, the plaintiff's application for additional evidence was dismissed. In view of the overwhelming evidence already produced on the file by the plaintiff, the First Appellate Court has decided the case on the preponderance of probabilities which is correct.

27. The next argument of the learned counsel is that even in the absence of plea of fraud, coercion and undue influence, the Court is required to examine the same, particularly when the question is with regard to testamentary disposition. The learned counsel relies upon the judgment passed in *Kavita Kanwar v. Mrs. Pamela Mehta and Others (2020)*

issuance of probate in relation to the Will dated 20.05.2003 allegedly executed by Smt.Amarjeet Mamik, bequeathing a major part of her property in favour of only one daughter, although she had another daughter and a son. The Court found that the propounder has failed to furnish reasonable explanation for the same and a thick cloud of suspicious circumstances hovers over the Will in question. The aforesaid judgment, with highest respect, is not applicable to the facts of the present case.

28. As regards the next objection that the First Appellate Court has failed to consider the suspicious circumstances, individually or collectively, this Court has already considered the same.

29. The last argument of the learned counsel is with regard to delay of 22 years in filing the suit. It would be noted here that the Will would come into effect only on 24.01.1990 i.e. on the death of the testator. The defendant No.1 to 6, the natural heirs, never claimed the property till the year 2011. The suit was filed on 06.09.2012. Sh.Surjeet Singh continued in possession of the property exclusively and the defendant No.1 to 6 never claimed any use and occupation charges or asserted rights upon the property in question. The Will in question is a registered Will. It is admitted by Sh.Avtar Singh son of late Sh.Raghubir Singh that his father was in the business of fabrication of bodies on the chassis of the trucks. Thus, late Sh.Raghubir Singh was not a rustic illiterate villager. It has also come in evidence that late Sh.Raghubir Singh and Sh.Surjeet Singh were partners. Late Sh.Raghubir Singh was the resident of modern city of Chandigarh. Hence, the delay of 22 years in filing the suit stands explained in the facts of the present case. The plaintiff, while filing the suit, has claimed that the

India and the defendant No.1 to 6 did not accept the title of the plaintiff as the absolute owner of the suit property and tried to take forcible possession from the plaintiff's son. In such circumstances, there is no undue delay in filing the suit.

30. Keeping in view the aforesaid discussion, the result is inevitable. Finding no ground to interfere, the appeal is dismissed, while upholding the judgment of the First Appellate Court.

31. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 01, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No